KRISHNAMOORTHY APPANNAN

v.

LEMBAGA TATATERTIB PERKHIDMATAN AWAM, PENTADBIRAN KERETAPI TANAH MELAYU, SENTUL, KUALA LUMPUR & ORS

HIGH COURT MALAYA, KUALA LUMPUR
MOHD SAARI YUSOFF J
[CIVIL NO: S1-21-240-1991]
8 JANUARY 1999

ADMINISTRATIVE LAW: *Natural justice - Disciplinary proceedings - Failure to supply report of investigations to employee - Whether there is a duty to supply such report - Whether employee must be given opportunity to explain or refute report - Whether finding of disciplinary board null and void*

The plaintiff was an employee of the third defendant. He was suspected of being involved in the theft of certain property and thus a report was submitted to the disciplinary board resulting in his dismissal. As the plaintiff was not supplied with the said report at any time, he applied, *inter alia,* for a declaration that his dismissal was null and *void.* The issue before the court was whether the disciplinary board had complied with the rules of natural justice.

Held:

The plaintiff's dismissal was null and void because by failing to supply him with the said report, he was not afforded an opportunity to explain or refute what had been taken into account by the disciplinary board in arriving at the finding of guilt.

[Application allowed.]

Case(s) referred to:

Inspector General of Police & Anor v. Alan Nor Kamat [1988] 1 MLJ 260 ***(refd)***
Re Godden [1971] 3 All ER 20 ***(refd)***
Shamsiah Ahmad Sham v. Public Services Commission, Malaysia & Anor [1991] 1 CLJ 23 ***(refd)***

Legislation referred to:

Public Officers (Conduct and Discipline) (Cap D) General Orders 1980, O. 26, O. 4(2)(f), (g)

For the plaintiff - Karpal Singh; M/s Karpal Singh & Co
For the defendant - Renuka Ahnantakrishnan; M/s Ananda & Co

Reported by S Dharmendran

JUDGMENT

Mohd Saari Yusoff J:

In a writ, the plaintiff applies for the following:

(a) a declaration that the purported dismissal of the plaintiff as a Tukang K2 Tingkatan Kanan attached with the Malayan Railway Administration, Kuala Lumpur is null and *void* and of no effect and that the plaintiff is still a Tukang K2 Tingkatan Kanan entitled to all the salaries and benefits due to him;

(b) an inquiry to determine the salaries, emoluments and other benefits due to the plaintiff;

(c) damages;

(d) interest on the adjudged sum from date of judgment to date of realisation

(e) costs; and

(f) any further or other relief deemed fit and proper by Honourable Court by the Honourable Court.

The uncontroverted facts is that on 18 October 1988 at 3.30am, there was a theft of railway property namely intermediate member 40 tonnes at the workshop in Sentul near the railway station. A suspect named R Chandravathanam was arrested at the scene of the incident. The other suspect was the plaintiff. He was arrested by the police at his house on the same day at 9.30am.

From the records, it seems that a committee was set up to investigate into the alleged offence of theft. The upshot of the investigation was that a report with a recommendation (hereinafter referred to as "the said report") was submitted to the disciplinary board ("the first defendant").

At all material times, the plaintiff was employed as a Tukang K2 by third defendant. By letter dated 29 March 1990, the plaintiff was informed that the first defendant had decided to take disciplinary action against the plaintiff under O. 4(2) (f) and O. 4(2)(g) Public Officers (conduct and discipline) (Cap. D) general order, 1980 with a view to dismissal or demotion in rank pursuant to O. 26 of the same general order.

Subsequently, the plaintiff was informed that the first defendant, after taking into account the plaintiff's representation and other related information, had decided that the plaintiff be dismissed with effect from 10 November 1990. The plaintiff appealed to the first defendant but it was dismissed.

The issue for determination is whether there is compliance with the rules of natural justice by the first defendant.

At the trial, En Karpal Singh, learned counsel for the plaintiff, did not adduce oral evidence but relied on agreed facts and agreed documents. The defence called SD1, secretary of the first defendant, to give evidence, who deposed that he attended the meeting convened by disciplinary board on 7 November 1990. At the meeting, the disciplinary board deliberated on the said report together with the plaintiff's representations as per letter (p. 23 of B).

Under cross examination, SD1 admitted that the plaintiff was not supplied with the said report at any time.

In *Shamsiah bte Ahmad Sham v. Public Services Commission, Malaysia & Anor* [1991] 1 CLJ 23 [1990] 3 MLJ 364, the facts in that case are that the appellant, a book-binder with the Government Printing Department, was dismissed by PSC after she was found guilty of negligence and dereliction of duty. PSC, in arriving at its decision to dismiss the appellant from service, had taken into account extraneous matters, namely, the appellant's records of past conducts. In this case, the appellant was not given an opportunity to explain, contradict or rebut her record of service. Held, her dismissal was null and *void*.

In *Re Godden* [1971] 3 All ER 20, Mr Godden, who was then the Kent Police Officer, had made accusations against his superior officers. The Kent Police Authority proceeded (under reg. 70(2) of the Police Pensions Regulations 1971) to refer for decision to a qualified medical practitioner on the ground that the inspector was suffering from a mental disorder of the paranoid type and thereby permanently disabled. It was held *inter alia* that the decision of the selected medical practitioner on the question referred to him under reg. 70(2) was a decision of a judicial character and must conform to the rules of natural justice. Further, it was held, Mr Godden's own medical advisers were entitled to see the same material (*eg* the P report) as was placed before the practitioner appointed to decide the matter under reg. 70(2) and any doctor whom he consulted.

The principles enunciated in the above two cases clearly demonstrate that the plaintiff ought to be supplied with the said report and be given an opportunity to explain or controvert what had been taken into account by the first defendant in arriving at the finding of guilt against the plaintiff.

That being the case, in my judgment, the omission to afford an opportunity for the plaintiff to explain and controvert the said report renders the dismissal of the plaintiff null and *void.*

On another aspect, since the proposed punishment had been included in the show cause letter, there is no necessity for the defendant to give an opportunity for the plaintiff to mitigate before punishment *Inspector General of Police & Anor v. Alan Nor bin Kamat* [1988] 1 MLJ 260.

In the premise and for the above reasons, I enter judgment for the plaintiff and order in terms as prayed.